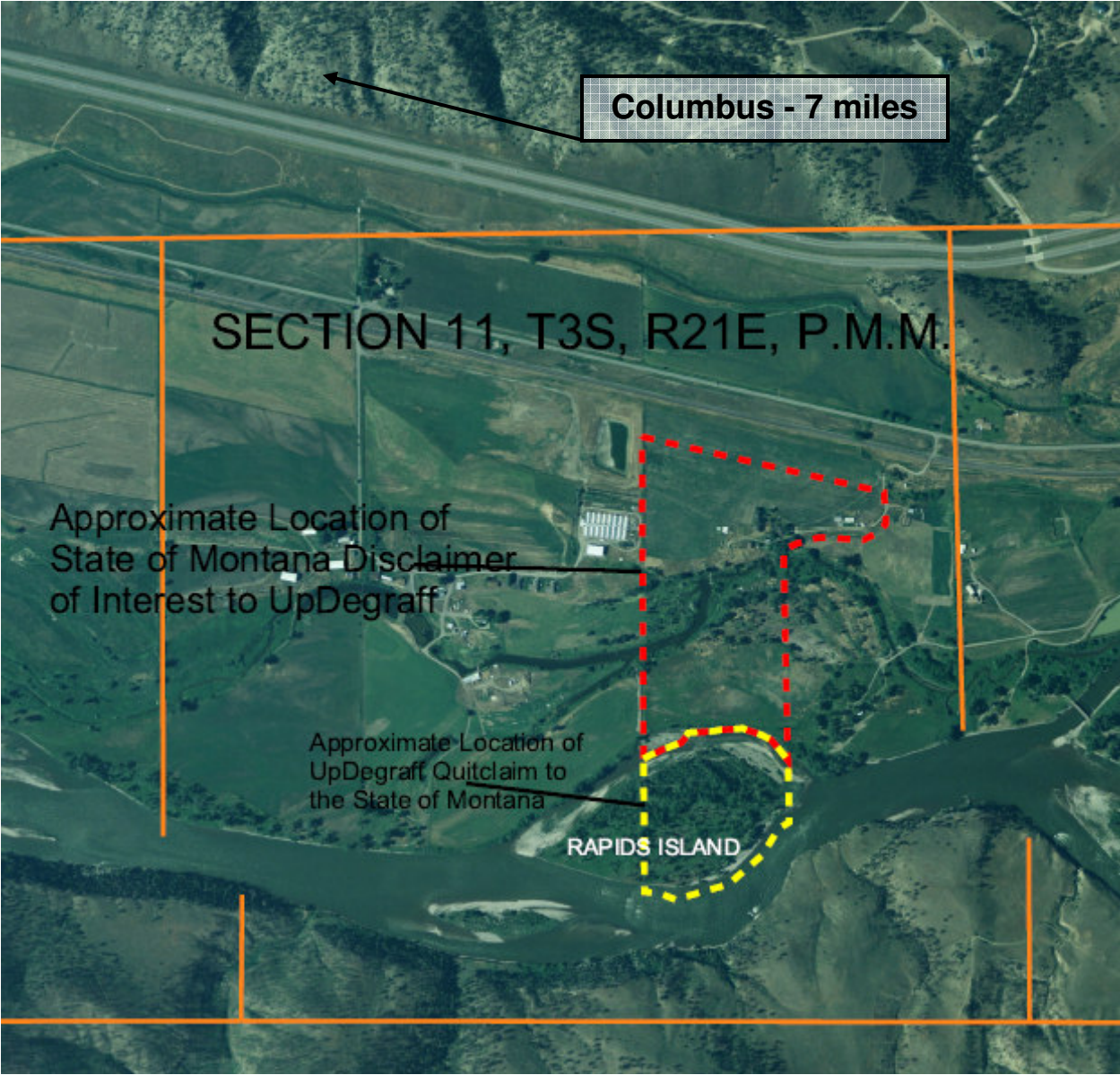


### **UPDEGRAFF QUIET TITLE SETTLEMENT**

Ms. Maxine UpDeGraff brought suit in UpDeGraff v. State of Montana, Cause No. DV-04-57, Mont. 22nd Judic. Distr. Ct., Stillwater County, to quiet title to an irregularly-shaped tract of land described as Amended Tract 1-A of Certificate of Survey 319237 within Section 11, Township 3 South, Range 21 East, MPM, in Stillwater County, Montana. The State claimed ownership of a portion of the lands described in the summons for this action because it was determined to be an island which had emerged from the bed of the Yellowstone River, between the low-water marks of the River, after statehood.

The parties have agreed to settle this case by delineating a boundary line between the state island and the private lands. Pursuant to this Settlement Agreement, title to the island would be held by the State in trust for common public schools. A copy of the Settlement Agreement is enclosed.



Tommy H. Butler  
Special Assistant Attorney General  
Montana Department of Natural  
Resources and Conservation  
P.O. Box 201601  
Helena, MT 59620-1601  
(406) 444-3776

MONTANA TWENTY-SECOND JUDICIAL DISTRICT COURT, STILLWATER  
COUNTY  
\* \* \* \* \*

MAXINE UPDEGRAFF,	)	
	)	
Plaintiff,	)	Cause No. DV-04-57
	)	
-vs-	)	SETTLEMENT
	)	AGREEMENT
	)	
THE STATE OF MONTANA, by and	)	
through Montana Department of State	)	
Lands, and also all other persons, unknown	)	
Claiming any right, title, estate, lien or	)	
Interest in the real property described in	)	
Plaintiff's complaint adverse to Plaintiff's	)	
Ownership, or any cloud upon Plaintiff's	)	
Title thereto,	)	
	)	
Defendants.	)	
_____	)	

This Settlement Agreement and Release is made and entered into effective as of  
October\_\_\_\_, 2007, by and between THE STATE OF MONTANA, DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION, whose address is P.O. Box 201601,  
Helena, Montana 59620-1601 (hereinafter referred to as "the Department") and MAXINE  
UPDEGRAFF (hereinafter referred to as "Ms. Updegraff") whose address is 1902  
Highway 10, Columbus, Montana 59019-7213.

**RECITALS**

WHEREAS, Ms. Updegraff, filed the above-captioned quiet title action to quiet title to an irregular-shaped tract of land described as Amended Tract 1-A of Certificate of Survey 319237 within Section 11, Township 3 South, Range 21 East, MPM, in Stillwater County, Montana, and claimed ownership of the lands described in the summons for this action;

WHEREAS, the Department claims that a southern portion of the above-described lands belongs to the State of Montana as an island emerging from between the low-water marks of the Yellowstone River, a navigable waterway, after statehood;

WHEREAS, the Department, and Ms. Updegraff have both determined that it is in the best interests of all parties to resolve the above-captioned action and settle the above-described issues without further actions, or declaratory rulings;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Department, Ms. Updegraff agree as follows:

1. The purpose of this Settlement Agreement and Release is to resolve title questions to the disputed property only between the subscribing parties, without full adjudication of all possible claims. The intent being to recognize lands accreted to the riparian uplands as belonging to Ms. Updegraff, and to recognize island lands arising vertically from between the low-water marks of the Yellowstone River as belonging to the State of Montana, in trust for Montana's common public schools.
2. The parties recognize that this Settlement Agreement and Release will not result in a full adjudication of title. Instead, this Settlement Agreement and Release is operative only as between the subscribing parties.

Nonetheless, the subscribing parties agree to take steps, or reasonably cooperate with the other party, so that both parties may enjoy the full benefits accruing to them under this Settlement Agreement and Release.

3. The parties shall bear their own costs and attorney's fees in the resolution of this dispute and the dismissal of the above-captioned cause of action;
4. The State of Montana and Ms. Updegraff, hereby accept the survey enclosed herein as Exhibit "A" as the basis for the boundary between each other's real property. Ms. UpDeGraff agrees to hold harmless and indemnify the State of Montana, DNRC, should any party challenge the validity of this survey and boundary line. This boundary shall be effective upon the acceptance of this Settlement Agreement by the District Court via a Consent Decree. The parties hereby disclaim any interest in and to the other's real property, as further evidenced by the State's disclaimer of interest and Ms. UpDeGraff's quit claim Deed, copies of which are enclosed herein as Exhibits "B" and "C", respectively.
5. Within 30 days after the Consent Decree is approved by the District Court in the above-captioned matter, the Department of Natural Resources and Conservation, will recommend to the State Board of Land Commissioners that the Board grant Ms. Updegraff a grazing lease upon the State island lands, as described in paragraph four above.

6. Contemporaneously with the filing of this Settlement Agreement with the District Court, Ms. Updegraff will move the Court for entry of a Consent Decree and to dismiss the above-captioned action without prejudice, incorporating the terms of this Settlement Agreement.
7. The terms and conditions of this Settlement Agreement do not constitute an admission of liability by the Department, the State of Montana or Ms. Updegraff, and shall not be used by any of the above-described parties in any future claim against any party, their officers, agents, employees, representatives, or owners.
8. Subject to any obligation to indemnify set forth herein, the State of Montana, the Department, and Ms. Updegraff hereby release, acquit, and forever discharge each of the subscribing parties to this Settlement Agreement, as well as their officers, agents, employees, representatives, and owners finally and completely, from any and all actions, causes of actions and claims arising out of or in any way related to the above-captioned litigation.
9. This Settlement Agreement and Release constitutes the entire agreement between the State of Montana, the Department, and Ms. Updegraff, and its provisions are contractual in nature and not merely recitals.

10. The validity, construction, interpretation, and administration of this agreement shall be governed by the substantive laws of the State of Montana.
11. This agreement shall not be modified or amended except by an instrument in writing signed by the State of Montana and Ms. Updegraff.
12. The Department and Ms. Updegraff individually warrant that their signatory executing this Settlement Agreement and Release has all necessary power to execute and deliver such a document; and that this Settlement Agreement and Release constitutes a valid, binding agreement, enforceable in accordance with its terms.

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
**MAXINE UPDEGRAFF**

STATE OF MONTANA )  
: ss.  
County of \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Maxine Updegraff, known to me to be the person who executed the within instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Printed or typed name:  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires: \_\_\_\_\_

**THE STATE OF MONTANA, AND THE MONTANA  
DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION**

Tommy H. Butler  
Special Assistant Attorney General  
DNRC

STATE OF MONTANA

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first above written.

(SEAL)



## DISCLAIMER OF INTEREST FROM THE STATE OF MONTANA

THE STATE OF MONTANA, acting through the State Board of Land Commissioners, whose address is P.O. Box 201601, Helena, MT, 59620-1601, does hereby disclaim all interest in and to the following-described real property:

A tract of land located in the SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub> and in Government Lot 1 and Government Lot 2 of Section 11, T3S, R21E, P.M.M., Stillwater County, Montana, and being more particularly described as follows:

Beginning at the NW corner of Section 11, T3S, R21E, P.M.M. on the Certificate of Survey: A tract of real property in The NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, Lot 2 and Lot 3 Section 11, T3S, R21E, P.M.M., Stillwater County, Montana, by Ronald A. Watters, RLS, Certificate of Registration No. 998S on November 30, 1976, thence N 89° 49' 14" E 1,320.00 feet along the section line between Section 2 and Section 11, thence N 89° 49' 14" E 1,587.04 feet to a point on the southerly right-of-way of Interstate 90, thence S 76° 33' 43" E 313.11 feet along said right of way to a point on a line 571.2 feet east of the center of the section line, thence S 00° 17' 18" E 877.39 feet along said line to a point on the northerly right of way of Highway No. 10, thence S 00° 17' 18" E 410.75 feet to a point on the southerly right-of-way of the Burlington-Northern Railroad Right-Of-Way to the true point of beginning.

From the true point of beginning, on Amendment Certificate of Survey 328126 at the Northwest Corner of Tract 1A Amended, Certificate of Survey Number 319237 by Thomas G. Kelley, (Registration No. 11289 LS), which is a point on the southerly right-of-way of Montana Rail Link Railroad, thence along said railroad right-of-way S 76° 59' 00" E, 1655.17 feet, (to a found previous survey point), thence leaving said railroad right-of way S 04° 52' 01" E, 223.40 feet, (to a found previous survey point), thence S 39° 23' 48" W, 90.47 feet, (to a found previous survey point), thence S 59° 16' 35" W, 98.13 feet, (to a found previous survey point), thence S 89° 43' 58" W, 288.53 feet, (to a found previous survey point), thence S 71° 31' 52" W, 155.36 feet, (to a found previous survey point), thence S 58° 43' 59" W, 97.41 feet, (to a found previous survey point), thence S 00° 24' 23" E, 1428.59 feet to a point on the previous north channel of the Yellowstone River,

Thence along the following nine courses:

- 1) North 40° 59' 46" West, 164.95 feet;
- 2) North 59° 05' 55" West, 104.42 feet;
- 3) North 78° 47' 35" West, 119.79 feet;
- 4) North 86° 59' 38" West, 41.78 feet;
- 5) South 81° 30' 16" West, 163.46 feet
- 6) South 83° 46' 31" West, 171.89 feet
- 7) South 47° 36' 40" West, 79.90 feet
- 8) South 70° 14' 04" West, 195.21 feet
- 9) South 69° 31' 36" West, 39.86 feet

Thence N 00° 17' 18" West, 2218.16 feet to the true point of beginning and containing approximately 50.652 acres, more or less, subject to all existing easements of record, apparent on the ground or reserved on this survey.

This Disclaimer of Interest is further subject to the reservation of the State of Montana of: fee simple ownership of the active bed of the Yellowstone River between the low-water marks pursuant to Sections 70-1-202 and 70-16-201, MCA; and the State's reservation of an easement for the public's use between high-water marks of the Yellowstone River, pursuant to 87-2-305, MCA.

IN TESTIMONY WHEREOF the State of Montana has caused these presents to be executed by the Governor and to be attested by the Secretary of State and countersigned by the Director of the Montana Department of Natural Resources and Conservation, and the Great Seal of the State, and the Seal of the State Board of Land Commissioners to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2007.

(GREAT SEAL OF  
THE STATE OF MONTANA)

\_\_\_\_\_  
BRIAN SCHWEITZER  
Governor of the State of Montana

ATTEST:

\_\_\_\_\_  
BRAD JOHNSON  
Secretary of State

(SEAL OF THE  
STATE BOARD OF  
LAND COMMISSIONERS)

\_\_\_\_\_  
Mary Sexton,  
Director, Department of Natural  
Resources & Conservation

## QUITCLAIM DEED

The Grantors, Maxine UpDeGraff, whose address is P.O. Box 294, Park City, MT 59063-0294, and Special K Ranch, Inc., a Montana non-profit Corporation, whose address is P.O. Box 479, Columbus, MT 59019-0479, do hereby quitclaim and convey to the Grantee, THE STATE OF MONTANA, acting through the State Board of Land Commissioners, in trust for common public schools, whose address is P.O. Box 201601, Helena, MT, 59620-1601, all their interest in and to the following-described real property:

A tract of land located in the SE $\frac{1}{4}$  of Section 11, T3S, R21E, P.M.M., Stillwater County, Montana, and being more particularly described as follows:

Beginning at the NW corner of Section 11, T3S, R21E, P.M.M. on the Certificate of Survey: A tract of real property in The NE $\frac{1}{4}$ NW $\frac{1}{4}$ , NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , Lot 2 and Lot 3 Section 11, T3S, R21E, P.M.M., Stillwater County, Montana, by Ronald A. Watters, RLS, Certificate of Registration No. 998S on November 30, 1976, thence N 89° 49' 14" E 1,320.00 feet along the section line between Section 2 and Section 11, thence N 89° 49' 14" E 1,587.04 feet to a point on the southerly right-of-way of Interstate 90, thence S 76° 33' 43" E 313.11 feet along said right of way to a point on a line 571.2 feet east of the center of the section line, thence S 00° 17' 18" E 877.39 feet along said line to a point on the northerly right of way of Highway No. 10, thence S 00° 17' 18" E 410.75 feet to a point on the southerly right-of-way of the Burlington-Northern Railroad Right-Of-Way; thence along said railroad right-of-way S 76° 59' 00" E, 1655.17 feet, (to a found previous survey point), thence leaving said railroad right-of way S 04° 52' 01" E, 223.40 feet, (to a found previous survey point), thence S 39° 23' 48" W, 90.47 feet, (to a found previous survey point), thence S 59° 16' 35" W, 98.13 feet, (to a found previous survey point), thence S 89° 43' 58" W, 288.53 feet, (to a found previous survey point), thence S 71° 31' 52" W, 155.36 feet, (to a found previous survey point), thence S 58° 43' 59" W, 97.41 feet, (to a found previous survey point), thence S 00° 24' 23" E, 1428.59 feet to a point on the previous north channel of the Yellowstone River, **the true point of beginning:**

Thence along the following nine courses:

- 1) North 40° 59' 46" West, 164.95 feet;
- 2) North 59° 05' 55" West, 104.42 feet;
- 3) North 78° 47' 35" West, 119.79 feet;
- 4) North 86° 59' 38" West, 41.78 feet;
- 5) South 81° 30' 16" West, 163.46 feet
- 6) South 83° 46' 31" West, 171.89 feet
- 7) South 47° 36' 40" West, 79.90 feet
- 8) South 70° 14' 04" West, 195.21 feet
- 9) South 69° 31' 36" West, 39.86 feet

Thence S 00° 17' 18" East a distance of 871.58 feet to the low-water mark of the Yellowstone River; thence S 82°34'39" E a distance of 108.76 feet; thence S 67°18'25" E a distance of 105.63 feet; thence N 74°51'21" E a distance of 367.82 feet; thence N 49°34'54" E a distance of 301.87 feet; thence N 31°57'07" E a distance of 202.42 feet; thence N 58°30'09" E a distance of 85.55 feet; thence N 00°24'23" W a distance of 391.76 feet **to the true point of beginning**, containing approximately 20.00 acres, more or less.

DATED: \_\_\_\_\_ By: \_\_\_\_\_  
**MAXINE UPDEGRAFF**

STATE OF MONTANA )  
 ) ss.  
County of \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Maxine Updegraff, known to me to be the person who executed the within instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first above written.

(SEAL) \_\_\_\_\_  
Printed or typed name:  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires: \_\_\_\_\_

DATED: SPECIAL K RANCH, INC., a Montana Non-profit Corporation

By: \_\_\_\_\_  
Darrell Ehrilick, President

STATE OF MONTANA )  
 : ss.  
County of \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ 2007, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Darrell Ehrilick, known to me to be the person who executed the within instrument as President of Special K Ranch, Inc. and acknowledged to me that he/she executed the same of Special K Ranch, Inc..

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year first above written.

(SEAL) Printed or typed name:  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_, Montana  
My commission expires: \_\_\_\_\_